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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 19.1.2007.

Dharamvir .... Appellant.

vs

Krishan Kumar .....Respondent.

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.Rakesh Kumar,Advocate,for the appellant.

Kiran Anand Lall, J.

This is a regular second appeal filed by the defendant. The plaintiff (respondent herein) had filed a suit for possession, by way of defendant's ejectment from the demised premises, and also for recovery of arrears of rent/ use and occupation charges, at the rate of Rs.1815/- per month, with effect from 1.10.1997, and also of house tax at the rate of 12.5%, with effect from 1.4.1996 onwards. It was alleged that the construction of property was completed during the year 1990 and as such, provisions of the Haryana Urban (Control of Rent and Eviction), Act, 1973 (for short “the Act”) were not applicable, to it. The plaintiff claimed to have terminated the tenancy vide notice dated 31.12.1997, served under Section 106 of the Transfer of Property Act, on the appellant, through registered A.D. vide postal receipt no.42 dated 1.1.1998. He had to file the suit as the defendant did not vacate the property, within the stipulated period of 15 days, after the service of notice on him.

The suit was contested by the appellant-defendant. His case was that the property was constructed much before the year 1987 i.e. more than 10 years prior to the filing of suit, and as such, the jurisdiction of civil

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court was barred under the Act. It was also pleaded that the rate of rent was Rs.1500/- per month only, and the appellant had duly paid it, along with house tax, upto 31.8.1998. Receipt of notice under Section 106 of the Transfer of Property Act was denied.

Parties went to the trial on the following issues:-

1. Whether the plaintiff is entitled to a decree for ejectment in respect of property in dispute detailed in para no.1 of the plaint? OPP
2. Whether the plaintiff is entitled for the recovery of rent/ use and occupation charges from 1.4.1996?OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether this court has got no jurisdiction to entertain and try this suit? OPD
5. Whether the plaintiff has no locus standi to file the present suit and has no cause of action against the defendant? OPD
6. Relief.

On the basis of evidence led by the parties in support of their respective averments, trial court decided all the issues in favour of the respondent and against the appellant and decreed the suit of the respondent for possession of property and also for the use and occupation charges, at the rate of Rs.1815/- per month. It was held that rent note, Ex.P2, wherein rate of rent was recorded as 1500/-, besides the house tax, had been duly proved. The factum of tenancy was, infact, not disputed, by the appellant, even. The agreement, Ex.P3, vide which the rate of rent was increased, was also held as proved,and so was the receipt of notice under Section 106 of the Transfer of Property Act, Ex.P6, by the appellant vide acknowledgment

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due, Ex.P5/2, and also the reply sent thereto, by him, to the respondent.

The first appellate court also affirmed all the findings of the trial court as well as the verdict.

A perusal of the judgments of both the courts below reveals that no substantial question of law arises for determination in this appeal. In fact, learned counsel for the appellant himself also conceded this position. That being so, the appeal deserves to be dismissed, in limine, and it is so ordered.

19.1.2007. (Kiran Anand Lall)
vs. Judge.